

GENERAL ACCOUNTING OFFICE

TITLE VII, ADEA, and EPA

APPENDIX III, TABLE 1

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: Federal-sector provisions of Title VII (§ 717) and the ADEA (§ 15), as well as the EPA, apply to GAO.</p> <p>Administrative processes: GAO management investigates and decides complaints initially. GAO employees may appeal to the PAB, where the PAB General Counsel may investigate and prosecute the action on behalf of employees. GAO must maintain claims-resolution and affirmative-employment programs, which the PAB evaluates. PAB is administratively part of GAO. Its Members are appointed by the Comptroller General (“CG”); and its General Counsel is selected by, and serves at the pleasure of, the PAB Chair, but is formally appointed by the CG.¹</p> <p>Judicial procedures: Title VII and ADEA allow suit and trial <i>de novo</i> after exhaustion of administrative remedies, provided the employee has not appealed to the PAB. (The employee may sue either after a final GAO decision or if there is no such decision 180 days after the complaint.) EPA allows suit without administrative remedies having been exhausted. Jury trials are not available for ADEA and EPA claims.</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as those at GAO.</p> <p>Administrative processes: + Use of model ADR process under CAA is prerequisite to proceeding with complaint. + Administrative processes are more streamlined under the CAA. + The OC would adjudicate claims and appeals. GAO now does this through the PAB; see earlier reference to the institutional structure of the PAB within GAO (in “current regime” column). – The CAA does not provide for investigation and prosecution, which GAO and the PAB now conduct, <i>{but should do so as to retaliation}</i>. <i>{The CAA should require recordkeeping and notice posting}</i>. ~ CAA confidentiality rules would apply. ~ The CAA does not require EEO programs, including affirmative employment, which are now required of GAO.</p> <p>Judicial procedures: + The CAA provides shorter deadlines for exhaustion of administrative remedies and access to the courts. + The CAA affords jury trials allowed under all laws, including ADEA and EPA.</p>	<p>Substantive rights: = Substantive rights under federal-sector provisions are generally the same as those at GAO.</p> <p>Administrative processes: = The processes at GAO are modeled generally on those in the federal sector. + EEOC, MSPB, and Special Counsel hear appeals and prosecute violations in the federal sector. GAO now does this through the PAB; see earlier reference to the institutional structure of the PAB within GAO. + GAO would be required to follow EEOC regulations governing agencies’ internal claims-resolution procedures and affirmative-employment programs.</p> <p>Judicial procedures: + Whereas PAB decisions may be reviewed only by appeal to the Federal Circuit, federal-sector procedures allow suit and trial <i>de novo</i> even after decision on appeal to the EEOC or MSPB.</p>	<p>Substantive rights: = Substantive rights under private-sector provisions are generally the same as those at GAO.</p> <p>Administrative processes: + The EEOC investigates and prosecutes in the private sector. GAO now does this through the PAB; see earlier reference to the institutional structure of the PAB within GAO. – The EEOC may be unable to provide timely investigation of all individual charges. – Private-sector provisions do not provide for administrative adjudication and appeal. ~ Employers in the private sector are not required to have claims-resolution or affirmative-employment programs.</p> <p>Judicial procedures: + Jury trials are available under private-sector procedures for all discrimination laws, including ADEA and EPA. ~ In the private sector, the EEOC can prosecute in district court, whereas prosecution under the GAOPA is before the PAB.</p>

¹ See generally Section 230 Report at 27-29.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: All substantive rights of the ADA apply to GAO, under § 509 of the ADA.</p> <p>Administrative processes: GAO management investigates and decides complaints initially. The GAOPA provides that GAO employees may appeal discrimination cases to the PAB, where the PAB GC would again investigate and prosecute the action on behalf of the employee; however, the CAA added a provision to the ADA assigning appellate authority to the Comptroller General, and this provision appears inconsistent with the GAOPA provision assigning appellate authority to the PAB.¹</p> <p>Judicial procedures: § 509 of the ADA allows suit and trial <i>de novo</i> after exhaustion of administrative remedies, provided the employee has not appealed to the PAB. (The employee may sue either after a final GAO decision or if there is no such decision 180 days after the complaint.) Jury trials and compensatory damages are arguably not available in disability suits against GAO.²</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as those at GAO.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + The OC would adjudicate claims and appeals. The GAOPA provides that this be done through the PAB; but see discussion in the “current regime” column on the apparent inconsistency between the ADA and the GAOPA regarding the PAB’s appellate authority; see also the discussion in Table 1 on the institutional structure of the PAB within GAO. + Administrative processes are more streamlined under the CAA. – The CAA does not provide for investigation and prosecution, which GAO and, arguably, the PAB now conduct, <i>{but the CAA should do so as to retaliation}</i>. <i>{The CAA should require recordkeeping and notice posting}</i>. ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + The CAA provides shorter deadlines for exhaustion of administrative remedies and access to the courts. + The CAA allows jury trials and compensatory damages, which are arguably not afforded at GAO.</p>	<p>Substantive rights: = Substantive rights under federal-sector provisions of the Rehabilitation Act, 29 U.S.C. § 791, are generally the same as those at GAO.</p> <p>Administrative processes: = The processes at GAO are modeled generally on those in the federal sector. + Federal sector provisions authorize EEOC, MSPB, and Special Counsel to hear appeals and prosecute; see earlier discussions regarding the PAB’s appellate authority and the institutional structure of the PAB within GAO. ~ Unlike ADA provisions now applicable at GAO, federal-sector provisions require affirmative-employment programs.</p> <p>Judicial procedures: + Jury trials and compensatory damages, arguably not available in disability suits against GAO, are afforded under federal-sector provisions.</p>	<p>Substantive rights: = Substantive rights under private-sector provisions of the ADA are generally the same as those at GAO.</p> <p>Administrative processes: + The EEOC investigates in the private sector; see earlier discussions regarding the PAB’s appellate authority and the institutional structure of the PAB within GAO. – The EEOC may be unable to provide timely investigation of all individual charges. – Private-sector provisions do not provide for administrative adjudication and appeal.</p> <p>Judicial procedures: + Jury trials and compensatory damages, arguably not available in disability suits against GAO, are afforded under private-sector provisions. + EEOC prosecutes private-sector violations in district court; as to GAO, there is no prosecution in district court, and it is uncertain whether the authority for prosecutions of ADA violations to be brought before the PAB is preserved in statute.</p>

1 The GAOPA provides, among other things, that the PAB will exercise the same authorities over appeals matters as are exercised by the EEOC. See 31 U.S.C. § 732(f)(2); see also § 3(g)(3) of Pub. Law No. 96-191, 94 Stat. 28-29 (Feb. 15, 1980) (GAOPA as enacted). However, § 509(a) of the ADA, 42 U.S.C. § 12209(a), as added by § 201(c)(5) of the CAA, generally assigns authority for administrative appeals to the “chief official of the instrumentality of Congress.” GAO, in comments submitted to assist the Board in preparing its Section 230 Study, noted this apparent statutory inconsistency and recommended that the relevant language of the ADA should be rescinded.

2 42 U.S.C. § 1981a(a)(2), which generally authorizes jury trials and compensatory damages in disability suits, does not reference § 509(a) of the ADA, 42 U.S.C. § 12209(a), as added by § 201(c)(5) CAA, which extends a private right of action for disability discrimination to GAO employees.

GAO: FAMILY AND MEDICAL LEAVE ACT

APPENDIX III, TABLE 3

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: FMLA provisions for the private sector, 29 U.S.C. § 2611 <i>et seq.</i>, apply to GAO.</p> <p>Administrative processes: The FMLA provides no administrative procedures, but requires the Comptroller General (“CG”) to exercise DoL’s authority to investigate and prosecute FMLA violations. Under the GAOPA, if a dispute is otherwise appealable (e.g., involving an “adverse action” or “prohibited personnel practice”), the PAB may remedy an FMLA violation, and the PAB GC will investigate and prosecute the complaint.</p> <p>Judicial procedures: GAO employees may sue for FMLA violations, and are granted liquidated or other damages specified in the private-sector statute. Jury trials, not being expressly provided by the FMLA, are arguably not allowed against the Federal government. PAB decisions may be appealed to the Federal Circuit.</p> <p>Substantive rulemaking process: The CG exercises DoL’s authority under the FMLA to adopt substantive regulations.</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as those at GAO. + Eligibility would be portable if an employee transferred between GAO and another employing office covered under the CAA, but is not now portable to or from GAO.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + Any FMLA complaint may be adjudicated under the CAA, whereas violations may now be remedied by the PAB only in adverse actions otherwise appealable. Also, see discussion of PAB in Table 1. ~ The CAA does not provide for investigation and prosecution, which the PAB GC conducts for cases before the PAB, <i>{but the CAA should do so as to retaliation}</i>. ~ CAA does not require recordkeeping and notice posting, which are now required at the GAO, <i>{but the CAA should do so}</i>. ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + The CAA provides jury trials, which are arguably not available now against GAO.</p> <p>Substantive rulemaking process: + The OC Board adopts regulations, ordinarily the same as DoL’s, for all employing offices; GAO is responsible currently for issuing its own regulations.</p>	<p>Substantive rights: + Federal-sector provisions establish different employer prerogatives than do the private-sector provisions now applicable at GAO.¹ + Eligibility would be portable if an employee transferred between GAO and another employing agency under federal-sector coverage, but is not now portable to or from GAO.</p> <p>Administrative processes: + The MSPB remedies FMLA violations implicated in appealable adverse actions in the federal sector. Processes before the PAB are modeled on those at the MSPB, but see discussion in Table 1 on the institutional structure of the PAB within GAO.</p> <p>Judicial procedures: – Federal-sector employees, unlike those at GAO, cannot sue under the FMLA, and can only obtain appellate judicial review of MSPB decisions in the Federal Circuit. – Federal-sector employees cannot recover liquidated or other damages specified in private-sector statute, as can GAO employees.</p> <p>Substantive rulemaking process: + OPM’s regulations apply Government-wide, whereas GAO is responsible for issuing its own FMLA regulations.</p>	<p>Substantive rights: = Substantive FMLA provisions for the private sector apply at GAO.</p> <p>Administrative processes: + DoL receives complaints and investigates FMLA violations in the private sector. Now, GAO is responsible for exercising DoL’s FMLA authorities for itself. – No administrative adjudication is afforded in the private sector. Now at GAO, the PAB adjudicates allegations of FMLA violation if the adverse action is appealable.² ~ Private-sector FMLA provisions require DoL to attempt to resolve complaints while they are under investigation, but does not establish a process of administrative adjudication, such as is provided by the PAB.</p> <p>Judicial procedures: + Jury trials, arguably not available against GAO, are allowed in the private sector. + DoL prosecutes violations in court; now GAO may exercise DoL’s authorities for itself.</p> <p>Substantive rulemaking process: + Regulations are issued by DoL for all private-sector employers, whereas GAO is responsible for issuing its own regulations.</p>

1 Under private-sector provisions applicable at GAO, but not under federal-sector provisions: (1) the employer may deny restoration to an employee who is a high-salary “key” employee; (2) an employer can make a binding election as to whether an employee taking FMLA leave must consume any available paid annual or sick leave or must, instead, to take unpaid leave; and (3) the employer can recoup health insurance costs from an employee who does not return to work after FMLA leave.

2 This table assumes that, under the private sector option, the PAB’s authority to remedy FMLA violations would not be retained, because administrative adjudication and appeal are not provided under private-sector laws.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: GAO is covered by the FLSA and by OPM's FLSA regulations. GAO is also covered by civil service statutes that authorize compensatory time off, credit hours, and compressed work schedules ("comp time") in exception to FLSA overtime pay.</p> <p>Administrative processes: A GAO employee who alleges an FLSA violation may submit a complaint to OPM, either immediately or after having first complained under GAO's administrative grievance procedures. GAO must provide any information requested by OPM and is legally bound by OPM's administrative decision.</p> <p>Judicial procedures: GAO employees may sue. Jury trials, not being expressly provided by the FLSA, are arguably not allowed against the Federal government.</p> <p>Substantive rulemaking process: GAO is subject to OPM's Government-wide substantive regulations implementing the FLSA and civil service provisions allowing comp time in lieu of FLSA pay.</p>	<p>Substantive rights: ~ The CAA would preclude receipt of comp time in lieu of FLSA overtime pay. ~ DoL's regulatory requirements would apply in lieu of OPM's, which are more specific and tailored to the federal civil service.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. ~ Complaints may be submitted for administrative adjudication, unlike present FLSA complaints against GAO decided by OPM without adjudication. – Under the CAA, information is developed only through the parties' discovery; now OPM can request necessary information from GAO. <i>{The CAA should provide for investigation and prosecution as to retaliation.}</i> <i>{The CAA should require recordkeeping and notice posting.}</i> ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + Jury trials are provided, which are arguably not now available against GAO.</p> <p>Substantive rulemaking process: ~ CAA substantive regulations are adopted for the legislative branch by the OC Board, subject to House and Senate approval; whereas GAO is now subject to regulations promulgated primarily for the executive branch by OPM, which is overseen by the President.¹</p>	<p>= GAO is covered by generally the same substantive, administrative, and judicial statutory provisions and OPM regulations and authorities as apply in the federal sector.</p>	<p>Substantive rights: ~ Private-sector employers are not covered by civil service provisions authorizing receipt of comp time in lieu of FLSA overtime pay.² ~ Under private sector provisions, GAO would become subject to DoL's substantive regulations in lieu of OPM's, which are more specific and tailored to the federal civil service.</p> <p>Administrative processes: – Whereas GAO is now bound by OPM's administrative decisions, private-sector employers are not bound by DoL's determinations unless DoL sues and prevails in court.</p> <p>Judicial procedures: + Jury trials, which are arguably not now available against GAO, are available under private-sector procedures.</p> <p>Substantive rulemaking process: ~ For the private sector, regulations are promulgated by DoL; whereas GAO is now subject to regulations promulgated by OPM.</p>

1 The head of OPM is appointed by, and serves at the pleasure of, the President, and acts for the President in many of OPM's personnel functions.

2 This table assumes that, under the private-sector option, the receipt of comp time in lieu of overtime pay would generally not be allowed. Although the same FLSA provisions apply in the federal sector and the private sector, the civil service statutes that authorize the use of comp time apply only in the federal sector.

GAO: EMPLOYEE POLYGRAPH PROTECTION ACT

APPENDIX III, TABLE 5

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: § 204 of the CAA extends the substantive rights of the EPPA to GAO.</p> <p>Administrative processes: There is disagreement as to whether GAO employees alleging a violation of § 204 may use CAA administrative procedures. There is disagreement whether GAO employees may seek a remedy for a § 204 violation from the PAB even when the adverse action is appealable under the GAOPA.</p> <p>Judicial procedures: There is disagreement as to whether GAO employees may sue under the CAA. If an employee seeks a remedy from the PAB in the case of an appealable adverse action, there may be disagreement whether the decision may be appealed to the Federal Circuit.</p> <p>Substantive rulemaking process: The OC Board has issued EPPA regulations, substantially similar to those promulgated by DoL, and has extended the regulations to cover GAO, but the extension has not been approved by the House and Senate. Accordingly, § 411 of CAA would apply “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.”</p>	<p>Substantive rights: = GAO is covered under EPPA substantive rights as applied by the CAA.</p> <p>Administrative processes: + If CAA procedures applied, use of model ADR process would be prerequisite to proceeding with complaint. + Applying CAA procedures would allow administrative adjudication by the OC and appeal to its Board, whereas adjudication and appeal by the PAB are permitted, if at all, only in an adverse action otherwise appealable. – The CAA does not provide for investigation or prosecution, whereas the PAB GC now arguably can do so for cases appealable to the PAB, {but the CAA should provide for investigation and prosecution as to retaliation}. {The CAA should require recordkeeping.} ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + Applying CAA procedures would grant GAO employees the right to sue and, if pursuing an administrative claim, to obtain appellate judicial review.</p> <p>Substantive rulemaking process: = Substantive regulations under the CAA are now promulgated by the same process for GAO as for other employing offices.</p>	<p>– EPPA rights do not apply generally in the federal sector.¹</p>	<p>Substantive rights: = GAO is covered under EPPA substantive rights as applied by the CAA.</p> <p>Administrative processes: + Under private-sector procedures, DoL would receive complaints from GAO employees and investigate violations. – Private-sector provisions do not provide for administrative adjudication and appeal. Now there is disagreement whether these are available under the CAA, and whether the PAB may adjudicates CAA charges in appealable adverse actions.²</p> <p>Judicial procedures: + Applying private-sector procedures would enable GAO employees to sue, whereas the right to sue under the CAA now is subject to dispute. + DoL can prosecute private-sector violations in court. Even if CAA or PAB procedures apply, they would not include prosecution in court.</p> <p>Substantive rulemaking process: ~ Regulations are promulgated by DoL for all private-sector employers; regulations now applicable to GAO, which must generally be the same as DoL’s regulations, are adopted by the OC Board for all employing offices, subject to House and Senate approval.</p>

1 To our knowledge, the only federal-sector application of EPPA and WARN Act rights, other than under the CAA, is under the Presidential and Executive Office Accountability Act, 3 U.S.C. § 401 et seq., which generally covers Presidential and Vice Presidential offices. Administrative and judicial procedures and rulemaking processes with respect to EPPA and WARN Act rights under this law are similar to those under the CAA, except regulations are issued by the President or the President’s designee, and administrative adjudication is before the MSPB.

2 This table assumes that, under the private-sector option, the PAB would not have authority to remedy EPPA violations, since administrative adjudication and appeal are not provided under laws that apply in the private sector.

GAO: WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: § 205 of the CAA extends the substantive rights of the WARN Act to GAO. In addition, GAO regulations under the GAOPA require 60 days’ advance notice to GAO employees affected by a RIF.¹</p> <p>Administrative processes: There is disagreement as to whether GAO employees alleging a violation of § 205 may use CAA administrative procedures. There is disagreement whether GAO employees may seek a remedy for a § 205 violation from the PAB even when the adverse action is appealable under the GAOPA.</p> <p>Judicial procedures: There is disagreement whether GAO employees may sue under the CAA.</p> <p>Substantive rulemaking process: The OC Board issued WARN Act regulations, substantially similar to those promulgated by DoL, and extended them to cover GAO, but the extension has not been approved by the House and Senate. Accordingly, § 411 of CAA would apply “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.”</p>	<p>Substantive rights: = GAO is covered under WARN Act substantive rights as applied by the CAA.</p> <p>Administrative processes: + If CAA procedures applied, use of model ADR process would be prerequisite to proceeding with complaint. + Applying CAA procedures would allow administrative adjudication by the OC and appeal to its Board, whereas there is disagreement whether the PAB may adjudicate any CAA violation. – The CAA does not provide for investigation or prosecution, whereas the PAB GC now arguably could do so for cases appealable to the PAB, {but the CAA should provide for investigation and prosecution of retaliation}. ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + Applying CAA procedures would grant GAO employees the right to sue and, if they pursue an administrative claim, to obtain appellate judicial review.</p> <p>Substantive rulemaking process: = Substantive regulations under the CAA are now promulgated by the same process for GAO as for other employing offices.</p>	<p>– WARN Act rights do not apply generally in the federal sector.² (Federal-sector employees in the competitive service are entitled to 60 days’ notice of a RIF, pursuant to applicable civil service statutes and regulations. However, this table makes no assumptions as to whether GAO’s existing regulations and remedies involving RIFs would be retained, or whether general civil service statutes and regulations governing RIFs would be applied to GAO. See generally footnote 1.)</p>	<p>Substantive rights: = GAO is covered under WARN Act substantive rights as applied by the CAA.</p> <p>Administrative processes: – Private-sector provisions do not provide for administrative adjudication and appeal. Now there is disagreement whether these are available under the CAA, and whether the PAB may adjudicate CAA complaints.³</p> <p>Judicial procedures: + Applying private-sector procedures would enable GAO employees to sue, whereas the right to sue under the CAA now is subject to dispute.</p> <p>Substantive rulemaking process: ~ Regulations are promulgated by DoL for all private-sector employers; regulations now applicable to GAO, which must generally be the same as DoL’s regulations, are adopted by the OC Board for all employing offices, subject to House and Senate approval.</p>

1 A GAO employee alleging defective notice under GAO’s regulations may seek a remedy from the PAB, and the PAB GC will investigate and pursue the employee’s complaint. There is no right to sue, but PAB decisions are appealable to the Federal Circuit. This table assumes that under either the CAA option or private-sector option, existing procedures for remedying violations of GAO’s RIF regulations need not be changed. Notice rights under GAO’s RIF regulations seem sufficiently distinct from WARN Act rights that the existing GAO procedures need not be superseded by application of WARN Act rights under the CAA or under the WARN Act itself.

2 To our knowledge, the only federal-sector coverage other than the CAA is under the Presidential and Executive Office Accountability Act. See Table 5, note 1, above.

3 This table assumes that, under the private-sector option, the PAB would not have authority to remedy WARN Act violations, since administrative adjudication and appeal are not provided under laws that apply in the private sector.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: GAO employees, like all other public- and private-sector employees, are covered by USERRA. In addition, § 206 of the CAA extends the substantive rights of USERRA to GAO.</p> <p>Administrative processes: Under USERRA, GAO employees may: (1) file a complaint with DoL, which investigates and informally seeks compliance, (2) ask the Special Counsel to prosecute the case, and/or (3) submit the case to the MSPB for adjudication. There is disagreement as to whether a GAO employee alleging a § 206 violation may use CAA administrative procedures.</p> <p>Judicial procedures: USERRA does not authorize Federal employees, including those at GAO, to sue, but MSPB decisions are appealable to the Federal Circuit. There is disagreement as to whether GAO employees may sue under the CAA.</p>	<p>Substantive rights: = GAO is covered under USERRA rights as applied by the CAA, as well as under USERRA itself, which applies substantially the same rights as the CAA.</p> <p>Administrative processes: + If CAA procedures applied, use of model ADR process would be a prerequisite to proceeding with complaint. + Applying CAA procedures would provide counseling, mediation, and adjudication administered by the OC, {and the CAA should also provide for investigation and prosecution of retaliation}. = These CAA procedures would be in addition to those under USERRA, by which GAO employees may now file claims seeking DoL investigation and may request prosecution by the Special Counsel and/or adjudication before the MSPB.¹ ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + Applying CAA judicial procedures would grant GAO employees the right to sue for § 206 violations; GAO employees are not afforded a private right of action under USERRA.</p>	<p>Substantive rights: = GAO is covered under the same substantive USERRA provisions as apply generally to the federal sector, and is also covered under the CAA, which makes applicable substantially the same rights as the USERRA applies in the federal sector.</p> <p>Administrative processes: = GAO employees may use the same USERRA procedures as used by federal-sector employees to file complaints seeking DoL investigation and ask the Special Counsel to prosecute and/or ask MSPB to adjudicate the case. – However, it is arguable that GAO employees may also now use CAA counseling, mediation, and adjudicatory procedures, which are not available generally in the federal sector.</p> <p>Judicial procedures: – There is no private right of action for federal-sector employees, whereas GAO employees may, at least arguably, sue under the CAA.</p>	<p>Substantive rights: = Substantive USERRA provisions that apply to the private sector also apply to GAO, and generally the same rights are also made applicable to GAO by the CAA.</p> <p>Administrative processes: = Private-sector employees, as well as GAO employees, may submit complaints to DoL, which investigates and informally seeks compliance. – Private-sector provisions do not provide for administrative adjudication of complaints. Now GAO employees may ask the Special Counsel to prosecute the complaint before the MSPB, and there is disagreement whether administrative adjudication and appeal are available under the CAA.</p> <p>Judicial procedures: + Applying private-sector procedures would enable GAO employees to sue, whereas the right of GAO employees to sue under the CAA is now subject to dispute. + Private-sector employees may ask the Attorney General to prosecute the complaint in court; now the Special Counsel may prosecute only before the MSPB.</p>

1 This table assumes that, under the CAA option, the existing remedial procedures under the USERRA would be retained. § 225(d) of the CAA states that a covered employee “may also utilize any provisions of . . . [USERRA] that are applicable to that employee.”

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: All substantive rights of the ADA, including those involving public access, apply to GAO, under § 509 of the ADA.</p> <p>Administrative processes: GAO must maintain administrative procedures under which members of the public can seek redress for ADA violations. GAO investigates complaints and provides for appeal within the agency. There is no administrative appeal to an entity outside of GAO, nor other outside agency oversight of compliance by GAO.</p> <p>Judicial procedures: After having exhausted administrative remedies, members of the public can sue and have a trial <i>de novo</i>. (An individual may sue either after a final GAO decision or if there is no such decision 180 days after the complaint.)</p> <p>Substantive rulemaking process: Substantive regulations promulgated by executive branch agencies under titles II-III of the ADA are not made applicable.</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as the public-access rights now at GAO under the ADA. – The prohibition against retaliation, which applies now at GAO under the ADA to all individuals, is not granted under the CAA to members of the public.</p> <p>Administrative processes: + The CAA provides for mediation and adjudication administered by the OC; now, as to allegations against GAO, no such procedures are provided under authority of an entity outside of GAO. + The CAA establishes an enforcement-based process, under which an administrative proceeding may be commenced only by the GC of the OC after receiving a charge. Enforcement at GAO now is by private action only. ~ CAA confidentiality rules would apply to mediations, hearings, and deliberations.</p> <p>Judicial procedures: – The charging individual may not sue under the CAA. However, such individual, having intervened in the CAA administrative proceeding, may appeal to the Federal Circuit.</p> <p>Substantive rulemaking process: + The OC Board promulgates regulations, generally the same as executive-branch agency regulations for the private sector, subject to House and Senate approval.¹ No entity outside of GAO now issues regulations applicable to GAO.</p>	<p>Substantive rights: = For the federal sector, § 504 of the Rehabilitation Act applies substantive rights that are generally the same as the public-access rights now applicable to GAO under the ADA.</p> <p>Administrative processes: = In the federal sector, as at GAO, agencies have established internal procedures for investigating and resolving public-access complaints. + The Attorney General is responsible under E.O. 12250 (reproduced at 42 U.S.C. § 2000d–1 note) for reviewing agency regulations and otherwise coordinating implementation and enforcement; now, as to GAO, no such authority has been granted to an entity outside of GAO.</p> <p>Judicial procedures: = In the federal sector, as at GAO, members of the public alleging public-access violations by agencies may sue.</p> <p>Substantive rulemaking process: = In the federal sector, as at GAO, substantive regulations promulgated by executive branch agencies under titles II-III of the ADA are not made applicable.</p>	<p>Substantive rights: = For the private sector, title III of the ADA applies generally the same substantive rights involving public access as are applicable to GAO under the ADA.</p> <p>Administrative processes: + Under title III of the ADA, the Attorney General investigates alleged violations in the private sector; now, as to allegations against GAO, no such authority has been granted to an entity outside of GAO.</p> <p>Judicial procedures: = In the private sector, as now at GAO, members of the public alleging public-access violations may sue. + The Attorney General may prosecute title III violations in court, whereas no agency may do so now as to GAO.</p> <p>Substantive rulemaking process: + Private-sector employers are subject to substantive regulations promulgated by the Attorney General. No entity outside of GAO now promulgates regulations for GAO.</p>

1 Because the regulations have not been approved, “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding” would be applied, pursuant to § 411 of CAA.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: Section 215 of the CAA extends the substantive rights of the OSHAct to GAO, and requires compliance with occupational safety and health (“OSH”) standards as established by DoL.</p> <p>Administrative processes: The administrative procedures of § 215 of the CAA apply fully to GAO. Requirements to keep records and report to DoL are imposed by the OSHAct and civil service law.</p> <p>Judicial procedures: The judicial procedures of § 215 of the CAA apply fully to GAO.</p> <p>Substantive rulemaking process: The OC Board has adopted substantive OSH regulations incorporating DoL’s OSH standards, and has adopted an amendment extending those regulations to cover GAO. However, neither the regulations nor the amendment has been approval by the House and Senate. Accordingly, “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding” would be applied, pursuant to § 411 of CAA.</p>	<p>= GAO is fully subject to the substantive, administrative, and judicial provisions of the CAA with respect to occupational safety and health, including the process for imposing regulatory requirements.</p> <p>~ {The CAA should include recordkeeping and reporting requirements administered by the OC}, whereas law now applicable to GAO requires recordkeeping and reporting to DoL.</p> <p>{The CAA should provide for investigation and prosecution of retaliation.}</p>	<p>Substantive rights: = E.O. 12196 (reproduced at 5 U.S.C. § 7902 note) requires executive branch agencies to comply with the same DoL standards as are made applicable to employing offices, including GAO, under the CAA.</p> <p>Administrative processes: ~ E.O. 12196 requires DoL to inspect and consider employee complaints; the CAA is administered for all employing offices, including GAO, by the OC. Unlike the CAA, the E.O. also requires each agency to establish its own OSH program.¹</p> <p>~ If DoL and the employing agency disagree, there is no adjudicatory or other formal dispute resolution process under the E.O., as there is under the CAA. Rather, the disagreement is submitted to the President.</p> <p>Judicial procedures: – There is no judicial review of actions or decisions under the E.O., unlike the CAA, which provides for appellate judicial review of administrative decisions.</p> <p>Substantive rulemaking process: ~ The E.O was issued for the executive branch by the President; CAA regulations, which are applicable to GAO, are adopted by the OC Board, subject to approval by the House and Senate.</p>	<p>Substantive rights: = In the private sector, the OSHAct applies the same DoL standards as are made applicable to employing offices, including GAO, under the CAA.</p> <p>Administrative processes: = Administrative processes for the private sector are generally the same as those made applicable for employing offices, including GAO, by the CAA.</p> <p>~ DoL administers the OSHAct in the private sector; the CAA is administered for employing offices, including GAO, by OC.</p> <p>Judicial procedures: = Judicial review procedures in the private sector are generally the same as those made applicable for employing offices, including GAO, under the CAA.</p> <p>~ DoL investigates and prosecutes private-sector retaliation. The CAA, which now covers GAO, grants no such authority, {but it should}; employees alleging retaliation can sue under the CAA, but cannot under private-sector provisions.</p> <p>Substantive rulemaking process: ~ DoL promulgates standards for all private-sector employers. The OC Board adopts CAA regulations, generally the same as DoL regulations, but, as the House and Senate have not approved the Board’s OSHAct regulations, § 411 of CAA would cause “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding” to be applied.</p>

1 The program must include periodic inspections, responding to employee reports of hazard, preventing retaliation, and creating a joint labor-management Occupational Safety and Health Committee.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: The GAOPA requires the Comptroller General to adopt a labor-management-relations program for GAO that assures each employee’s right to join, or to refrain from joining, a union, and is otherwise “consistent” with Chapter 71.</p> <p>Administrative processes: Under the GAOPA and the CG’s implementing regulations, the PAB has authority to hear cases arising from representation matters, unfair labor practices (“ULPs”), and exceptions from arbitral awards under negotiated grievance procedures.</p> <p>Judicial procedures: PAB decisions on matters other than representation may be appealed to the Federal Circuit. Any person aggrieved, including an individual employee, may bring an appeal.</p> <p>Substantive rulemaking process: The CG, by order, established the substantive terms of GAO’s labor-management relations program. The GAOPA requires generally that the program must be “consistent” with Chapter 71.</p>	<p>Substantive rights: + The CAA affords greater scope to collective bargaining than GAO’s order.¹ – The CAA empowers the Board, with House and Senate approval, to exclude offices from coverage under labor-management relations provisions if exclusion is required because of conflict of interest or Congress’s constitutional responsibilities; the GAOPA has no such provision.</p> <p>Administrative processes: = The OC Board under the CAA exercises a role generally similar to that of the PAB. + See discussion in Table 1 on institutional structure of the PAB within GAO. – Under the CAA, unlike under the GAOPA, employees may not pursue ULP claims individually. – The CAA, unlike the GAOPA, affords no administrative (or judicial) review of arbitral awards involving adverse or unacceptable-performance actions. ~ CAA confidentiality rules would apply to hearings and deliberations.</p> <p>Judicial procedures: – The CAA, unlike the GAOPA, precludes the charging party from appealing a ULP decision.</p> <p>Substantive rulemaking process: + The OC Board adopts CAA regulations, ordinarily the same as the FLRA’s regulations, for all employing offices; whereas GAO issues regulations for itself, “consistent” with Chapter 71.</p>	<p>Substantive rights: + Chapter 71 affords greater scope to collective bargaining than the GAO regulations. See footnote 1.</p> <p>Administrative processes: + The FLRA administers Chapter 71 in the federal sector. See discussion in Table 1 on institutional structure of the PAB within GAO. ~ Chapter 71, unlike the GAOPA, provides that arbitral awards involving adverse agency actions may not be appealed administratively, but must be appealed directly to the Federal Circuit.</p> <p>Judicial procedures: = Chapter 71 provides for judicial appeal to the Federal Circuit generally, as does the GAOPA. + Chapter 71, unlike the GAOPA, authorizes the FLRA to seek restraining orders.</p> <p>Substantive rulemaking process: + Under Chapter 71, substantive provisions applicable in the executive branch are established mostly by statute, and to a limited extent by FLRA regulation, which must conform to Chapter 71. GAO issues labor-management regulations for itself, which need be only “consistent” with Chapter 71.</p>	<p>Substantive rights: + Private-sector employees, covered by the National Labor Relations Act (“NLRA”), have the right to strike. ~ Unions and employers in the private sector may enter into union security agreements. ~ Unions in the private sector, if the employer agrees, may obtain exclusive recognition by card majority (<i>i.e.</i>, without secret ballot election).</p> <p>Administrative processes: ~ Grievance procedures are not a required provision of any bargaining agreement in the private sector, as they are at GAO. ~ Awards under binding arbitration are not ordinarily subject to review, as they are under the GAOPA.</p> <p>Judicial procedures: ~ NLRB decisions are appealable to the D.C. Circuit or the Circuit where the employer is located; under the GAOPA, PAB decisions are appealable to the Federal Circuit.</p> <p>Substantive rulemaking process: + The NLRB has authority to issue substantive regulations for the private sector; GAO issues labor-management regulations for itself, which need be only “consistent” with Chapter 71.</p>

1 For example, the following restrictions apply at GAO: (a) exclusion of pay and hours from bargaining, even insofar as the employer has statutory discretion, (b) exclusion from negotiated grievance procedures of disputes involving Title VII, ADEA, and ADA violations, or involving actions for unacceptable performance, and (c) pre-determined, broadly-drawn bargaining units.

GOVERNMENT PRINTING OFFICE

TITLE VII, ADEA, and EPA

APPENDIX III, TABLE 11

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: Federal-sector provisions of Title VII (§ 717) and the ADEA (§ 15), as well as the EPA, apply to GPO.</p> <p>Administrative processes: GPO management investigates and decides complaints initially. The EEOC and MSPB hear appeals, and the Special Counsel may investigate and prosecute against unlawful discrimination and retaliation that is a “prohibited personnel practice.” Negotiated grievance procedures (binding arbitration and review by the FLRA or the Federal Circuit) may also be used. GPO is subject to EEOC regulations governing claims-resolution and affirmative-employment programs, and EEOC evaluates GPO’s performance.</p> <p>Judicial procedures: Title VII and ADEA allow suit and trial <i>de novo</i> after exhausting administrative remedies. (The employee may sue either after a final GPO decision, or after a final EEOC decision on appeal, or if there is no such decision 180 days after the complaint or appeal.)¹ EPA allows suit without having exhausted administrative remedies. Jury trials are not available for ADEA and EPA claims.</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as those at GPO.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. ~ CAA claims are handled administratively by the OC, rather than by GPO management, EEOC, MSPB, and Special Counsel. + Administrative processes are more streamlined under the CAA. – The CAA does not provide for investigation and prosecution, which GPO and Special Counsel now conduct, {<i>but should do so as to retaliation</i>}. {<i>The CAA should require recordkeeping and notice posting</i>}. ~ CAA confidentiality rules would apply. ~ The CAA does not require EEO programs, including affirmative employment, which are now required at GPO.</p> <p>Judicial procedures: + The CAA provides shorter deadlines for exhaustion of administrative remedies and access to the courts. + The CAA allows jury trials under all laws, including ADEA and EPA.</p>	<p>= The same substantive, administrative, and judicial provisions that apply generally in the federal sector cover GPO, and the authority of the EEOC, MSPB, and the Special Counsel extend to GPO.</p>	<p>Substantive rights: = Substantive rights under private sector provisions are generally the same as those at GPO.</p> <p>Administrative processes: – The EEOC may be unable to provide timely investigation of all individual charges. – Private-sector provisions do not provide for administrative adjudication and appeal. ~ Employers in the private sector are not required to have claims resolution or affirmative-employment programs.</p> <p>Judicial procedures: + Jury trials are available under private-sector procedures for all discrimination laws, including ADEA and EPA. ~ In the private sector, the EEOC can prosecute in court, whereas prosecution now at GPO is before the MSPB only.</p>

1 An employee asserting a “mixed case” complaint may also sue either if there is no GPO decision 120 days after the complaint, or after a final decision by the MSPB on appeal, or if there is no decision by the MSPB 120 days after an appeal to the MSPB.

GPO: ADA TITLE I and REHABILITATION ACT

APPENDIX III, TABLE 12

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: All substantive rights of the ADA apply to GPO, under § 509 of the ADA.</p> <p>Administrative processes: GPO management investigates and decides complaints. There is generally no administrative appeal from the Public Printer’s final decision (apart from negotiated grievance procedures.). Negotiated grievance procedures (binding arbitration and review by the FLRA or the Federal Circuit) may also be used.</p> <p>Judicial procedures: § 509 of the ADA allows suit and trial <i>de novo</i> after exhausting administrative remedies. (The employee may sue either after a final GPO decision or if there is no such decision 180 days after the complaint.) Jury trials and compensatory damages are arguably not available in disability suits against GPO.¹</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as those at GPO.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + The CAA provides for adjudication and appeal administered by the OC. Currently as to allegations against GPO, there is no administrative appeal to an entity outside of GPO. + Administrative processes are more streamlined under the CAA. ~ The CAA does not provide for investigation and prosecution, whereas GPO now investigates charges, {<i>but the CAA should provide for investigation and prosecution of retaliation</i>}. {<i>The CAA should require recordkeeping and notice posting</i>}. ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + The CAA provides shorter deadlines for exhaustion of administrative remedies and access to the courts. + The CAA provides jury trials and compensatory damages in disability suits, which are arguably not afforded against GPO.</p>	<p>Substantive rights: = Substantive rights under federal-sector provisions of the Rehabilitation Act, 29 U.S.C. § 791, are generally the same as those at GPO.</p> <p>Administrative processes: = The processes at GPO are modeled generally on those in the federal sector. + Federal sector provisions authorize EEOC, MSPB, and Special Counsel to hear appeals and prosecute. Currently as to allegations against GPO, no such authorities have been granted to an entity outside of GPO. ~ Federal-sector provisions, unlike ADA provisions now applicable to GPO, require affirmative-employment programs.</p> <p>Judicial procedures: = The right to sue GPO is generally the same as in the federal sector. + Jury trials and compensatory damages, which are arguably not available in disability suits against GPO, are afforded under federal-sector provisions.</p>	<p>Substantive rights: = Substantive rights under private-sector provisions of the ADA are generally the same as those at GPO.</p> <p>Administrative processes: + Private-sector provisions authorize the EEOC to investigate and prosecute. Now, as to allegations against GPO, no such authorities have been granted to an entity outside of GPO. – The EEOC may be unable to provide timely investigation of all individual charges. – Private-sector provisions do not provide for administrative adjudication.</p> <p>Judicial procedures: + Jury trials and compensatory damages, arguably not available in disability suits against GPO, are afforded under private-sector provisions. + In the private sector, the EEOC can prosecute in court.</p>

1 42 U.S.C. § 1981a(a)(2), which generally authorizes jury trials and compensatory damages in disability suits, does not reference § 509(a) of the ADA, 42 U.S.C. § 12209(a), as added by § 201(c)(5) of the CAA, which extends a private right of action for disability discrimination to GPO employees.

GPO: FAMILY AND MEDICAL LEAVE ACT

APPENDIX III, TABLE 13

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: FMLA provisions for the federal sector, 5 U.S.C. § 6381 <i>et seq.</i>, as well as OPM's substantive FMLA regulations, apply.</p> <p>Administrative processes: The FMLA provides no administrative remedy, but GPO employees may seek a remedy through GPO's administrative grievance procedure, or from the MSPB if the agency action is appealable under civil service law (e.g., involving an "adverse action" or "performance-based action" or "prohibited personnel practice"). Negotiated grievance procedures may also be used.</p> <p>Judicial procedures: Applicable FMLA provisions do not provide the right to sue and do not grant liquidated or other damages specified in the FMLA for private sector employees. Decisions of the MSPB are appealable to the Federal Circuit under general civil service law.</p> <p>Substantive rulemaking process: GPO is subject to OPM's Government-wide substantive regulations implementing the federal-sector FMLA provisions.</p>	<p>Substantive rights: – The CAA establishes different employer prerogatives than the federal-sector provisions now at GPO.¹</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + CAA provides adjudication of any FMLA complaint, whereas now at GPO, the MSPB remedies FMLA violations only if the agency action is otherwise appealable. – Retaliation by GPO is now investigated and prosecuted by the Special Counsel. The CAA does not now provide for investigation and prosecution of retaliation, <i>{but it should}</i>. <i>{The CAA should require recordkeeping and notice posting.}</i> ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + The CAA affords a private right of action, which is not available now at GPO.</p> <p>Substantive rulemaking process: ~ CAA substantive regulations are adopted for the legislative branch by the OC Board, subject to House and Senate approval; whereas GPO is now subject to regulations adopted primarily for the executive branch by OPM, which is overseen by the President. (On OPM, see footnote at page 4, note 1, above.)</p>	<p>= With respect to FMLA rights, GPO is under the same substantive, administrative, and judicial statutory provisions as are executive branch agencies, and is subject to the authority of MSPB like executive-branch agencies.</p>	<p>Substantive rights: – Private-sector law establishes different employer prerogatives than the federal-sector provisions now at GPO (see footnote 1).</p> <p>Administrative processes: ~ Under private-sector provisions, DoL receives complaints and investigates FMLA violations, but does not afford administrative adjudication of complaints; whereas now the MSPB adjudicates alleged FMLA violations at GPO, but only if the adverse action is otherwise appealable under civil service law.²</p> <p>Judicial procedures: + Private-sector provisions afford a private right of action, which is not available now at GPO. + DoL prosecutes violations in court. No agency does so now as to allegations of violation in the federal sector, including at GPO.</p> <p>Substantive rulemaking process: ~ For the private sector, regulations are promulgated by DoL, which is overseen by the President; whereas GPO is now subject to regulations promulgated by OPM, which is also overseen by the President. (See Table 4, footnote 1, on OPM.)</p>

1 Under private-sector provisions made applicable under the CAA, but not under federal-sector provisions at GPO: (1) the employer may deny restoration to an employee who is a high-salary "key" employee; (2) an employer can make a binding election as to whether an employee taking FMLA leave must consume any available paid annual or sick leave or must, instead, take unpaid leave; and (3) the employer can recoup health insurance costs from an employee who does not return to work after FMLA leave.

2 This table assumes that, under private-sector coverage, the MSPB would not retain authority to remedy FMLA violations at GPO, because the MSPB has no such authority in the private sector.

GPO: FAIR LABOR STANDARDS ACT

APPENDIX III, TABLE 14

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: GPO is covered by the FLSA and by OPM's substantive FLSA regulations. The Kiess Act, 44 U.S.C. § 305(b), allows GPO to pay salaried employees compensatory time off for overtime work. GPO is also covered by civil service statutes authorizing credit hours and compressed work schedules in exception to FLSA overtime pay.</p> <p>Administrative processes: A GPO employee alleging a violation may complain to OPM, either immediately or after having first complained under GPO's administrative grievance process. GPO must provide any information requested by OPM, and is legally bound by OPM's administrative decision. Bargaining unit members must use negotiated grievance procedures.</p> <p>Judicial procedures: GPO employees may sue for FLSA violations. Jury trials, not being expressly provided by the FLSA, are arguably not allowed against the Federal government.</p> <p>Substantive rulemaking process: GPO is subject to substantive regulations promulgated by OPM implementing the FLSA Government-wide.</p>	<p>Substantive rights: + The CAA would withdraw GPO's authority to require earning of comp time. ~ The CAA would also preclude the receipt of comp time in lieu of FLSA overtime pay. ~ DoL's regulatory requirements would apply in lieu of OPM's, which are more specific and tailored to the federal civil service.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. ~ The CAA provides counseling, mediation, and adjudication administered by the OC, unlike complaints now against GPO, decided by OPM without adjudication. – Under the CAA, information is developed only through the parties' discovery; OPM can currently request necessary information from GPO. <i>{The CAA should provide for investigation and prosecution as to retaliation.}</i> <i>{The CAA should require recordkeeping and notice posting.}</i> ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + The CAA provides for jury trials, which are arguably not now available against GPO.</p> <p>Substantive rulemaking process: ~ CAA substantive regulations are adopted for the legislative branch by the OC Board, subject to House and Senate approval; GPO is subject to regulations issued primarily for the executive branch by OPM, which the President oversees. (See Table 4, note 1, on OPM.)</p>	<p>Substantive rights: = GPO is covered by generally the same FLSA substantive statutory provisions and OPM's regulations and authorities as apply in the federal sector. + Federal-sector employers cannot require employees to receive comp time in lieu of overtime pay, as GPO can do under the Kiess Act.</p> <p>Administrative processes: = GPO employees are covered under the same statutory and regulatory provisions governing OPM's receipt and resolution of complaints as federal-sector employees.</p> <p>Judicial procedures: = GPO employees are covered under the same provisions establishing a private right of action as federal-sector employees.</p> <p>Substantive rulemaking process: = GPO is covered by generally the same OPM regulations implementing the FLSA as apply in the federal sector. + However, federal-sector employees are also subject to OPM's Government-wide regulations implementing civil service provisions authorizing comp time in lieu of FLSA overtime pay, whereas GPO can issue its own regulations on that subject.</p>	<p>Substantive rights: + Private-sector employers cannot require employees to receive comp time in lieu of overtime pay, as GPO can do. ~ Private-sector employers are not covered by civil service provisions authorizing flexible schedules in exception to FLSA overtime pay requirements.¹ ~ Private-sector provisions would apply DoL's implementing regulations in lieu of OPM's, which are more specific and tailored to the Federal civil service..</p> <p>Administrative processes: ~ Whereas GPO is now bound by OPM's administrative decisions on individual complaints, employers under private-sector provisions are not bound by DoL's administrative decisions on complaints unless DoL sues and prevails in court.</p> <p>Judicial procedures: + Jury trials, which are arguably not now available against GPO, are available under private-sector procedures.</p> <p>Substantive rulemaking process: ~ For the private sector, regulations are promulgated by DoL; whereas GPO is now subject to regulations promulgated by OPM.</p>

¹ This table assumes that, under the private-sector option, the receipt of comp time in lieu of overtime pay would be generally not allowed, because civil service statutes that authorize the use of comp time in exception to FLSA requirements apply only in the federal sector.

GPO: EMPLOYEE POLYGRAPH PROTECTION ACT

APPENDIX III, TABLE 15

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
GPO is not covered under EPPA, under §204 of the CAA, or under any other law making applicable the rights of the EPPA.	<p>Substantive rights:</p> <ul style="list-style-type: none">+ Application of the CAA would extend EPPA substantive rights to GPO. <p>Administrative processes:</p> <ul style="list-style-type: none">+ Use of model ADR process under CAA is a prerequisite to proceeding with complaint.+ Applying CAA procedures would provide counseling, mediation, and adjudication administered by the OC. <p><i>{The CAA should provide for investigation and prosecution of retaliation.}</i></p> <p><i>{The CAA should require recordkeeping.}</i></p> <p>~ CAA confidentiality rules would apply.</p> <p>Judicial procedures:</p> <ul style="list-style-type: none">+ Applying CAA procedures would grant GPO employees the right to sue and, if they pursue an administrative claim, to obtain appellate judicial review of a final administrative decision. <p>Substantive rulemaking process:</p> <ul style="list-style-type: none">+ Under the CAA, substantive regulations would be promulgated for GPO under the same rulemaking process as for other employing offices.	= The rights of the EPPA do not apply generally in the executive branch. ¹	<p>Substantive rights:</p> <ul style="list-style-type: none">+ The substantive rights of the EPPA apply generally in the private sector. <p>Administrative processes:</p> <ul style="list-style-type: none">+ Applying private-sector procedures would authorize DoL to receive complaints from GPO employees and to investigate violations. <p>Judicial procedures:</p> <ul style="list-style-type: none">+ Applying private-sector procedures would enable GPO employees to sue.+ DoL can prosecute in court. <p>Substantive rulemaking process:</p> <ul style="list-style-type: none">+ Applying private-sector provisions would extend substantive regulations issued by DoL to cover GPO.

1 To our knowledge, the only federal-sector coverage other than the CAA is under the Presidential and Executive Office Accountability Act. See Table 5, note 1, above.

GPO: WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT

APPENDIX III, TABLE 16

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>GPO is not covered under the WARN Act, under § 205 of the CAA, or under any other law making applicable the rights of the WARN Act.</p> <p>(Most GPO employees are “competitive service” employees covered by OPM’s RIF regulations and/or are members of bargaining units under collective bargaining agreements, both of which require 60 days’ advance notice to employees affected by RIFs.¹)</p>	<p>Substantive rights:</p> <p>+ Application of the CAA would extend WARN Act substantive rights to GPO.</p> <p>Administrative processes:</p> <p>+ Use of model ADR process under CAA is a prerequisite to proceeding with complaint.</p> <p>+ Applying CAA procedures would provide counseling, mediation, and adjudication administered by the OC.</p> <p>{The CAA should provide for investigation and prosecution of retaliation.}</p> <p>~ CAA confidentiality rules would apply.</p> <p>Judicial procedures:</p> <p>+ Applying CAA procedures would grant GPO employees the to sue and, if they pursue an administrative claim, to obtain appellate judicial review.</p> <p>Substantive rulemaking process:</p> <p>= Under the CAA, substantive regulations would be promulgated for GPO under the same rulemaking process as for other employing offices.</p>	<p>– WARN Act rights do not apply generally in the federal sector.² (Federal-sector employees, like GPO employees, in the competitive service are entitled to 60 days’ notice of a RIF, pursuant to applicable civil service statutes and regulations.)</p>	<p>Substantive rights:</p> <p>+ The substantive rights of the WARN Act apply generally in the private sector.</p> <p>Administrative processes:</p> <p>= Private-sector provisions do not provide for either investigation, prosecution, or administrative adjudication of complaints.</p> <p>Judicial procedures:</p> <p>+ Applying private-sector procedures would enable GPO employees to sue.</p> <p>Substantive rulemaking process:</p> <p>+ Applying private-sector provisions would extend substantive regulations issued by DoL to cover GPO.</p>

1 A GPO employee alleging defective notice under RIF regulations may seek a remedy from the MSPB. There is no right to sue, but MSPB decisions are appealable to the Federal Circuit. Bargaining unit members may seek a remedy through negotiated grievance procedures. This table assumes that, under either the CAA option or the private-sector option, the existing procedures for remedying violations of civil service RIF regulations need not be changed. Notice rights under civil service regulations seem sufficiently distinct from WARN Act rights that the existing procedures for remedying RIF notice violations need not be superseded by application of either the CAA or the private-sector provisions.

2 To our knowledge, the only federal-sector coverage other than the CAA is under the Presidential and Executive Office Accountability Act. See Table 5, note 1, above.

GPO: VETERANS EMPLOYMENT AND REEMPLOYMENT

APPENDIX III, TABLE 17

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: GPO employees, like all other public- and private-sector employees, are covered by USERRA. GPO is not covered under § 206 of the CAA, which makes applicable the rights and protections of USERRA.</p> <p>Administrative processes: Under USERRA, GPO employees may file a complaint with DoL, which investigates and informally seeks compliance. A GPO employee may seek a remedy through GPO’s administrative grievance procedures or, if the agency action is appealable under civil service law, from the MSPB. Negotiated grievance procedures may also be used.</p> <p>Judicial procedures: USERRA does not authorize Federal employees, including those at GPO, to sue, but MSPB decisions are appealable under civil service law to the Federal Circuit.</p>	<p>Substantive rights: = Substantive rights under § 206 of the CAA are substantially similar to those applicable to GPO under the USERRA.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + Applying CAA procedures would provide counseling, mediation, and adjudication administered by the OC; whereas a GPO employee may now complain to the MSPB only if the agency action is otherwise appealable. <i>{The CAA should provide for investigation and prosecution of retaliation.}</i> = CAA procedures would apply in addition to the right to file a claim with DoL under USERRA.¹ ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + Applying CAA procedures would grant GPO employees the right to sue, which they may not now do under the USERRA.</p>	<p>Substantive rights: = GPO is covered under the same substantive USERRA provisions as apply generally to the federal sector.</p> <p>Administrative processes: = Employees under federal-sector provisions of USERRA, including GPO employees, may complain to DoL, which investigates and informally seeks compliance. + USERRA generally authorizes federal-sector employees, but not GPO employees, to: (1) request the Special Counsel to pursue a case on the employee’s behalf, and (2) have any alleged USERRA violation adjudicated by the MSPB.</p> <p>Judicial procedures: = Federal-sector employees, like GPO employees, may not sue.</p>	<p>Substantive rights: = GPO is covered under the same substantive USERRA provisions as private-sector employers.</p> <p>Administrative processes: = Private-sector employees, like GPO employees, may submit complaints to DoL, which investigates and informally seeks compliance. – Private-sector provisions do not provide for administrative adjudication of complaints, whereas now GPO employees may complaint to the MSPB in an adverse action appealable under civil service law.</p> <p>Judicial procedures: + Applying private-sector procedures would grant GPO employees the right to sue, which they do not now have. + Private-sector employees, but not GPO employees, may ask the Attorney General to prosecute the violation in court.</p>

1 This table assumes that, under the CAA option, the existing remedial procedures under USERRA would be retained. § 225(d) of the CAA states that a covered employee “may also utilize any provisions of . . . [USERRA] that are applicable to that employee.”

<u>Current Regime</u>	<u>— Compared to CAA Coverage</u>	<u>— Compared to Federal-Sector Coverage</u>	<u>— Compared to Private-Sector Coverage</u>
<p>Substantive rights: All substantive rights of the ADA, including those involving public access, apply to GPO, under § 509 of the ADA.</p> <p>Administrative processes: GPO must maintain administrative procedures under which members of the public can seek redress for ADA violations. GPO investigates complaints and provides for appeal within the agency. There is no administrative appeal to an entity outside of GPO, nor other outside agency oversight of compliance by GPO.</p> <p>Judicial procedures: After having exhausted administrative remedies, members of the public can sue and have a trial <i>de novo</i>. (An individual may sue either after a final GPO decision or if there is no such decision 180 days after the complaint.)</p> <p>Substantive rulemaking process: Substantive regulations promulgated by executive branch agencies under titles II-III of the ADA are not made applicable.</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as the public-access rights now at GPO under the ADA. – The prohibition against retaliation, which applies now at GPO under the ADA to all individuals, is not granted under the CAA to members of the public.</p> <p>Administrative processes: + The CAA provides for mediation and adjudication administered by the OC; now, as to allegations against GPO, no such procedures are provided under authority of an entity outside of GPO. + The CAA establishes an enforcement-based process, under which an administrative proceeding may be brought only by the OC GC, upon receiving a charge. Enforcement at GPO now is by private action only. ~ CAA confidentiality rules would apply to mediations, hearings, and deliberations.</p> <p>Judicial procedures: – The charging individual may not sue under the CAA. However, such individual, having intervened in the CAA administrative proceeding, may appeal to the Federal Circuit.</p> <p>Substantive rulemaking process: + The OC Board adopts CAA regulations, generally the same as executive-branch agency regulations for the private sector, subject to House and Senate approval.¹ No entity outside of GPO now issues regulations applicable to GPO.</p>	<p>Substantive rights: = For the federal sector, § 504 of the Rehabilitation Act applies substantive rights that are generally the same as the public-access rights applicable to GPO under the ADA.</p> <p>Administrative processes: = In the federal sector, as at GPO, agencies have established internal procedures for investigating and resolving public-access complaints. + The Attorney General is responsible under E.O. 12250 (reproduced at 42 U.S.C. § 2000d–1 note) for reviewing agency regulations and otherwise coordinating implementation and enforcement; now, as to allegations against GPO, no such authorities have been granted to an entity outside of GPO.</p> <p>Judicial procedures: = In the federal sector, as at GPO, members of the public alleging public-access violations by agencies may sue.</p> <p>Substantive rulemaking process: = In the federal sector, as at GPO, substantive regulations promulgated by executive branch agencies for the private sector are not made applicable.</p>	<p>Substantive rights: = For the private sector, title III of the ADA applies generally the same substantive rights involving public access as are applicable to GPO under the ADA.</p> <p>Administrative processes: + Under title III of the ADA, the Attorney General investigates alleged violations in the private sector; now, as to allegations against GPO, no such authority has been granted to an agency outside of GPO.</p> <p>Judicial procedures: = In the private sector, as now at GPO, members of the public alleging public-access violations may sue. + The Attorney General may prosecute title III violations in court, whereas no agency may do so now as to GPO.</p> <p>Substantive rulemaking process: + Private-sector employers are subject to substantive regulations promulgated by the Attorney General. No entity outside of GPO now promulgates regulations applicable to GPO.</p>

¹ Because the Board's public access regulations have not been approved, "the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding" would be applied, pursuant to § 411 of CAA.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: § 19(a)(1) of the OSHAct requires all Federal agencies, including GPO, to provide safe and healthful conditions of employment “consistent with” DoL’s OSH standards. GPO is not subject to either § 215 of the CAA or E.O. 12196 (reproduced at 5 U.S.C. § 7902 note), which establishes the executive branch occupational safety and health (“OSH”) program. The Public Printer has adopted OSH standards that he has determined are “consistent.”</p> <p>Administrative processes: No agency outside of GPO has authority to inspection or require GPO compliance with OSH standards. GPO has established its own compliance procedures, including procedures for responding to employee complaints and regular inspections. Requirements to keep records and report to DoL are imposed by the OSHAct and civil service law (5 U.S.C. § 7902).</p> <p>Judicial procedures: No judicial procedures apply to GPO with respect to OSHAct compliance.</p> <p>Substantive rulemaking process: The Public Printer has issued health and safety standards in the form of “instructions.”</p>	<p>Substantive rights: + The CAA generally makes DoL’s OSH standards applicable. Although GPO applies OSH standards that are generally the same as DoL’s standards, present law only requires GPO to provide conditions “consistent with” those standards.</p> <p>Administrative processes: + The OC would adopt exceptions and variances, conduct inspections, enforce, and resolve disputes; no such authority is now granted to an entity outside of GPO. ~ {The CAA should require recordkeeping and reporting administered by the OC}, law now applicable to GPO requires recordkeeping and reporting to DoL. {The CAA should provide for investigation and prosecution of retaliation.} ~ CAA confidentiality rules would apply to deliberations of hearing officers and the Board.</p> <p>Judicial procedures: + The CAA provides judicial review by the Federal Circuit and authorizes judicial compliance orders under some circumstances, whereas there is now no judicial review or enforcement at GPO.</p> <p>Substantive rulemaking process: + CAA regulations, generally the same as DoL’s OSH standards, are issued by the OC Board subject to House and Senate approval.¹ GPO issues OSH standards for itself, and must afford conditions “consistent” with DoL’s standards.</p>	<p>Substantive rights: + E.O. 12196 requires executive-branch agencies to comply with DoL’s OSH standards. Although GPO in fact applies OSH standards that are generally the same as DoL’s standards, present law only requires GPO to provide conditions “consistent with” those standards.</p> <p>Administrative processes: + E.O. 12196 requires each covered agency to establish its own OSH compliance program, requires DoL to inspect and consider employee complaints, and, if DoL and the employer disagree, the President decides. At GPO, no agency outside of GPO is authorized to inspect, consider employee complaints, require compliance, or resolve disputes.</p> <p>Judicial procedures: = In the federal sector, as at GPO, there is no judicial enforcement or review.</p> <p>Substantive rulemaking process: + E.O. 12196, adopted by the President for the entire executive branch, applies DoL’s OSH standards, whereas GPO issues OSH standards for itself and must provide conditions “consistent” with DoL’s OSH standards.</p>	<p>Substantive rights: + The OSHAct requires private-sector employers and employees to abide by DoL’s OSH standards. Although GPO in fact applies OSH standards that are generally the same as DoL’s standards, present law only requires GPO to provide conditions “consistent with” those standards.</p> <p>Administrative processes: + The OSHAct authorizes DoL to adopt exceptions and variances, conduct inspections, enforce compliance, and resolve disputes; whereas now no entity outside of GPO has such authority.</p> <p>Judicial procedures: + The OSHAct provides for appellate judicial review and authorizes judicial compliance orders under some circumstances. Now, as to GPO, there is no judicial review or enforcement.</p> <p>Substantive rulemaking process: + DoL promulgates OSH standards for the entire private sector; whereas GPO issues OSH standards for itself and must provide conditions “consistent” with DoL’s OSH standards.</p>

1 Because the Board’s OSHAct regulations have not been approved, “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding” would be applied, pursuant to § 411 of CAA.

GPO: LABOR-MANAGEMENT RELATIONS

APPENDIX III, TABLE 20

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: GPO is covered by Chapter 71 and by the FLRA’s regulations thereunder.</p> <p>Administrative processes: Under Chapter 71, the FLRA hears cases arising from representation matters and unfair labor practices (“ULPs”) at GPO. Exceptions from arbitral awards may be taken to the FLRA (except for awards involving adverse or unacceptable-performance actions, which are subject to judicial review). Under the Kiess Act, the Joint Committee on Printing approves any wage agreement and, in case of impasse, decides on wages.¹</p> <p>Judicial procedures: FLRA decisions on matters other than representation or exceptions from arbitral awards may be appealed to the Federal Circuit. Any person aggrieved, including a GPO employee, may appeal. FLRA decisions on exceptions to arbitral awards may not be further appealed unless they involve a ULP. Arbitral awards involving adverse or unacceptable-performance actions, which may not be appealed to the FLRA, may be appealed to the Federal Circuit.</p> <p>Substantive rulemaking process: GPO is subject to substantive regulations promulgated by the FLRA.</p>	<p>Substantive rights: = The CAA affords generally the same substantive rights as apply now at GPO under Chapter 71. –The CAA empowers the Board, with House and Senate approval, to exclude offices from coverage under labor-management relations provisions if exclusion is required because of conflict of interest or Congress’s constitutional responsibilities; Chapter 71 has no such provision.</p> <p>Administrative processes: = The OC Board under the CAA exercises a role generally similar to that of the FLRA. ~ CAA confidentiality rules would apply to hearings and deliberations.</p> <p>Judicial procedures: – A charging party may not appeal a ULP decision. – The CAA, unlike Chapter 71, affords no judicial review of arbitral awards involving adverse or unacceptable-performance actions (nor, under the CAA, is there administrative review of such actions). – The CAA, unlike Chapter 71, affords no authority for the OC to seek temporary relief or a restraining order.</p> <p>Substantive rulemaking process: ~ The OC Board adopts CAA regulations, ordinarily the same as FLRA regulations, subject to House and Senate approval; GPO is subject to regulations issued for the federal sector by the FLRA.</p>	<p>= The same substantive, administrative, and judicial statutory provisions of Chapter 71 apply generally in the federal sector as apply now at GPO, and agencies in the federal sector are generally subject to the authority of the FLRA as is GPO.</p>	<p>Substantive rights: + Private-sector employees, covered by the National Labor Relations Act (“NLRA”), have the right to strike. ~ Unions and employers in the private sector may enter into union security agreements. ~ Unions in the private sector, if the employer agrees, may obtain exclusive recognition by card majority (<i>i.e.</i>, without secret ballot election).</p> <p>Administrative processes: ~ Grievance procedures are not a required provision of any bargaining agreement in the private sector, as they are under Chapter 71. ~ Awards under binding arbitration are not ordinarily subject to review, as they are under Chapter 71.</p> <p>Judicial procedures: ~ NLRB decisions are appealable to the D.C. Circuit or the Circuit where the employer is located; under Chapter 71, FLRA decisions are appealable to the Federal Circuit.</p> <p>Substantive rulemaking process: ~ The NLRB has authority to issue substantive regulations for the private sector, as does the FLRA for the federal sector, including GPO.</p>

1 This table assumes that the Joint Committee’s authority under this provision of the Kiess Act, 44 U.S.C. § 305(a), would not be displaced by coverage under any of the three coverage options.

LIBRARY OF CONGRESS

TITLE VII, ADEA, and EPA

APPENDIX III, TABLE 21

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: Federal-sector provisions of Title VII (§ 717) and the ADEA (§ 15), as well as the EPA, apply to the Library.</p> <p>Administrative processes: Library management investigates and decides complaints. There is no administrative appeal from the Librarian’s final decision (apart from negotiated grievance procedures). Negotiated grievance procedures (binding arbitration and review by the FLRA or the Federal Circuit) may also be used. The Library must maintain claims-resolution and affirmative-employment programs.</p> <p>Judicial procedures: Title VII and ADEA allow suit and trial <i>de novo</i> after exhausting administrative remedies. (Employees may sue either after a final Library decision or if there is no such decision 180 days after the complaint.) EPA allows suit without having exhausted administrative remedies. Jury trials are not available for ADEA and EPA claims.</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as those at the Library.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + The CAA provides for counseling, mediation, and adjudication administered by the OC. Now, as to allegations against the Library, no entity outside of the Library has such authorities. + Administrative processes are more streamlined under the CAA. ~ The CAA does not provide for investigation and prosecution, whereas the Library now investigates charges, {<i>but the CAA should provide for investigation and prosecution of retaliation.</i>} {<i>The CAA should require recordkeeping and notice posting.</i>} ~ CAA confidentiality rules would apply. ~ The CAA does not require EEO programs, including affirmative employment, which are now required of the Library.</p> <p>Judicial procedures: + The CAA provides shorter deadlines for exhaustion of administrative remedies and access to the courts. + The CAA allows jury trials under all laws, including ADEA and EPA.</p>	<p>Substantive rights: = Substantive rights in the federal sector are generally the same as those at the Library.</p> <p>Administrative processes: = The processes at the Library are modeled generally on those in the federal sector. + Federal sector provisions provide for EEOC, MSPB, and Special Counsel to hear appeals and prosecute violations. Now, as to allegations against the Library, no entity outside of the Library has such authorities. ~ The Library would be required to follow EEOC regulations governing agencies’ internal claims-resolution procedures and affirmative-employment programs. Now the Library must maintain such programs, but no outside entity oversees or regulates the Library’s performance.</p> <p>Judicial procedures: = Judicial remedies in the federal sector are the same as those at the Library.</p>	<p>Substantive rights: = Substantive rights under private-sector provisions are generally the same as those at the Library.</p> <p>Administrative processes: + Private sector provisions provide for the EEOC to investigate and prosecute. Now, as to allegations against the Library, no entity outside of the Library has such authorities. – The EEOC may be unable to provide timely investigation of all individual charges. ~ Employers in the private sector are not required to have claims-resolution or affirmative-employment programs.</p> <p>Judicial procedures: + Jury trials are available under private-sector procedures for all discrimination laws, including ADEA and EPA. + In the private sector, the EEOC can prosecute in court.</p>

LIBRARY: ADA TITLE I and REHABILITATION ACT

APPENDIX III, TABLE 22

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: All substantive employee rights of the ADA apply to the Library, under § 509 of the ADA.</p> <p>Administrative processes: The Library management investigates and decides complaints. There is generally no administrative appeal from the Librarian’s final decision (apart from negotiated grievance procedures). Negotiated grievance procedures (binding arbitration and review by the FLRA or the Federal Circuit) may also be used.</p> <p>Judicial procedures: § 509 of the ADA allows suit and trial <i>de novo</i> after exhausting administrative remedies. (The employee may sue either after a final Library decision or if there is no such decision 180 days after the complaint.) Jury trials and compensatory damages are arguably not available in disability suits against the Library.¹</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as those at the Library.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + The CAA provides for adjudication and appeal administered by the OC. Now, as to allegations against the Library, there is no right to appeal to an agency outside of the Library. + Administrative processes are more streamlined under the CAA. – The CAA does not provide for investigation and prosecution, whereas the Library now investigates charges, {<i>but the CAA should provide for investigation and prosecution of retaliation</i>}. {<i>The CAA should require recordkeeping and notice posting.</i>} ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + The CAA provides shorter deadlines for exhaustion of administrative remedies and access to the courts. + The CAA affords jury trials and compensatory damages in disability suits, which are arguably not available against the Library.</p>	<p>Substantive rights: = Substantive rights under federal-sector provisions of the Rehabilitation Act, 29 U.S.C. § 791, are generally the same as those at the Library.</p> <p>Administrative processes: = The processes at the Library are modeled generally on those in the federal sector. + Federal sector provisions authorize EEOC, MSPB, and Special Counsel to hear appeals and prosecute violations. Now, as to allegations against the Library, no such authorities have been granted to an agency outside of the Library. ~ Federal-sector provisions, unlike ADA provisions now applicable to the Library, require affirmative-employment programs.</p> <p>Judicial procedures: = The right to sue the Library is generally the same as in the federal sector. + Jury trials and compensatory damages, which are arguably not available in disability suits against the Library, are afforded under federal-sector provisions.</p>	<p>Substantive rights: = Substantive rights under private-sector provisions of the ADA are generally the same as those at the Library.</p> <p>Administrative processes: + Private sector provisions provide for an the EEOC to investigate and prosecute; now, as to allegations against the Library, no such authorities have been granted to an agency outside of the Library. – The EEOC may be unable to provide timely investigation of all individual charges. – Private-sector provisions do not provide for administrative adjudication.</p> <p>Judicial procedures: + Jury trials and compensatory damages, arguably not available in disability suits against the Library, are afforded under private-sector provisions.</p>

1 42 U.S.C. § 1981a(a)(2), which generally authorizes jury trials and compensatory damages in disability suits, does not refer to § 509(a) of the ADA, 42 U.S.C. § 12209(a), as added by § 201(c)(5) of the CAA, which extends a private right of action for disability discrimination to Library employees.

LIBRARY: FAMILY AND MEDICAL LEAVE ACT

APPENDIX III, TABLE 23

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: FMLA provisions for the private sector, 29 U.S.C. § 2611 <i>et seq.</i>, apply to the Library.</p> <p>Administrative processes: There is no administrative appeal to an entity outside of the Library. FMLA provides no administrative procedures, but requires the Librarian to exercise DoL’s authority to investigate and prosecute FMLA violations.</p> <p>Judicial procedures: Library employees may sue for FMLA violations, and are granted liquidated or other damages specified in the private-sector statute. However, jury trials, not being expressly provided by the FMLA, are arguably not allowed against the Federal government.</p> <p>Substantive rulemaking process: The Librarian exercises DoL’s authority under the FMLA to adopt substantive regulations.</p>	<p>Substantive rights: = Substantive rights under the CAA generally are the same as those at the Library. + Eligibility would be portable in transfers between the Library and other employing offices covered under the CAA, but is not now portable to or from the Library.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + The CAA provides for adjudication and appeal administered by the OC. Now, as to allegations against the Library, there is no right to appeal to an agency outside of the Library. ~ The CAA does not provide for agency investigation or prosecution, whereas DoL’s authorities to investigate and prosecute are exercised by the Librarian, <i>{but the CAA should provide investigation and prosecution of retaliation}</i>. ~ The CAA does not require recordkeeping and notice posting, which are now required at the Library, <i>{but the CAA should do so}</i>. ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + The CAA provides for jury trials, which are arguably not available at the Library.</p> <p>Substantive rulemaking process: +The OC Board adopts regulations, ordinarily the same as DoL’s, for all employing offices; the Library is responsible currently for issuing its own regulations.</p>	<p>Substantive rights: + Federal-sector provisions establish different employer prerogatives than do the private-sector provisions now applicable at the Library.¹ + Eligibility would be portable if an employee transferred between the Library and another employing agency under federal-sector coverage, but is not now portable to or from GAO.</p> <p>Administrative processes: + The MSPB remedies FMLA violations implicated in appealable adverse actions in the federal sector, whereas now the Library is responsible for exercising DoL’s enforcement and other authorities with respect to itself.</p> <p>Judicial procedures: – Federal-sector employees, unlike those at the Library, cannot sue under the FMLA, and can only obtain appellate judicial review of MSPB decisions in the Federal Circuit. – Federal-sector employees cannot recover liquidated or other damages specified in private-sector statute, as can Library employees.</p> <p>Substantive rulemaking process: + OPM’s FMLA regulations apply Government-wide, whereas the Library is responsible for issuing its own FMLA regulations.</p>	<p>Substantive rights: = Substantive FMLA provisions for the private sector apply at the Library.</p> <p>Administrative processes: – Under private-sector provisions, DoL receives complaints and investigates FMLA violations; now the Library is responsible for exercising DoL’s FMLA authorities with respect to itself.</p> <p>Judicial procedures: + Provisions applicable in the private sector provide for jury trials, which are arguably not now available against the Library. + DoL prosecutes violations; now the Library is responsible for exercising this authority with respect to itself.</p> <p>Substantive rulemaking process: + Regulations for the private sector are issued by DoL for all employing offices, whereas the Library is responsible for issuing its own FMLA regulations.</p>

1 Under private-sector provisions applicable at GAO, but not under federal-sector provisions: (1) the employer may deny restoration to an employee who is a high-salary “key” employee; (2) an employer can make a binding election as to whether an employee taking FMLA leave must consume any available paid annual or sick leave or must, instead, to take unpaid leave; and (3) the employer can recoup health insurance costs from an employee who does not return to work after FMLA leave.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: The Library is covered by the FLSA, and by DoL’s substantive FLSA regulations. The Library is also covered by civil service statutes allowing compensatory time off, credit hours, and compressed work schedules (“comp time”) in exception to FLSA overtime requirements.</p> <p>Administrative processes: A Library employee who alleges an FLSA violation may submit a complaint to the Librarian through administrative grievance procedures. OPM can resolve claims for damages, but not other FLSA complaints, under its general claims-settlement authority.</p> <p>Judicial procedures: Library employees may sue. Jury trials, not being expressly provided by the FLSA, are arguably not allowed against the Federal government.</p> <p>Substantive rulemaking: The Library is subject to OPM’s substantive regulations implementing the FLSA Government-wide. However, the Library is subject to its own regulations implementing exceptions from FLSA pay under civil service laws.</p>	<p>Substantive rights: ~ The CAA would preclude receipt of comp time in lieu of FLSA overtime pay.</p> <p>Administrative processes: + Use of model ADR process under CAA is a prerequisite to proceeding with complaint. + The CAA provides for mediation and adjudication administered by the OC for all FLSA complaints, whereas OPM may now resolve complaints against the Library only for settlement of damages. + CAA procedures provide for administrative adjudication, whereas OPM can settle money claims without administrative adjudication and has no jurisdiction as to non-monetary FLSA claims at the Library. <i>{The CAA should provide for investigation and prosecution of retaliation.}</i> <i>{The CAA should require recordkeeping and notice posting.}</i> ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + The CAA provides for jury trials, which are arguably not available against the Library.</p> <p>Substantive rulemaking: ~ CAA substantive regulations are adopted by the OC Board, subject to approval of House and Senate; whereas the Library is now subject to regulations promulgated primarily for the private sector by DoL, which is overseen by the President.</p>	<p>Substantive rights: ~ Federal-sector provisions would apply OPM’s implementing regulations, which are more specific and tailored to the federal civil service that DoL’s FLSA regulations, which now apply.</p> <p>Administrative processes: + OPM receives and resolves any FLSA complaints against federal-sector employers, whereas it may only settle claims against the Library for damages. + Federal-sector employers are subject to government-wide OPM regulations on the use of comp time in exception to FLSA requirements, whereas the Library now issues its own regulations on that subject.</p> <p>Judicial procedures: = Library employees are covered under the federal-sector provisions establishing a private right of action.</p> <p>Substantive rulemaking: + Federal-sector employees are subject to OPM’s Government-wide regulations implementing civil service provisions authorizing comp time in lieu of FLSA overtime pay, whereas the Library issues its own regulations on that subject.</p>	<p>Substantive rights: = The Library is covered by generally the same FLSA substantive statutory provisions and DoL regulations as apply in the private sector. ~ Private-sector employers are not covered by the civil service provisions authorizing comp time in exception to FLSA pay.¹</p> <p>Administrative processes: + DoL investigates and prosecutes alleged FLSA violations in the private sector, whereas OPM now receives complaints against the Library only for settlement of damages.</p> <p>Judicial procedures: + Jury trials, which are arguably not now available against the Library, are available under private sector procedures.</p> <p>Substantive rulemaking: = The Library is covered by generally the same DoL regulations implementing the FLSA as apply in the private sector.</p>

1 This table assumes that, under the private-sector option, the receipt of comp time in lieu of overtime pay would generally not be allowed, because civil service statutes authorizing the use of comp time in exception to FLSA requirements apply only to the federal sector.

LIBRARY: EMPLOYEE POLYGRAPH PROTECTION ACT

APPENDIX III, TABLE 25

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: § 204 of the CAA extends the substantive rights of the EPPA to the Library.</p> <p>Administrative processes: There is disagreement as to whether Library employees alleging a violation of § 204 may use CAA procedures. There may be disagreement as to whether Library employees may seek a remedy for a § 204 violation using the Library’s administrative grievance procedures, or negotiated grievance procedures at the Library.</p> <p>Judicial procedures: There is disagreement as to whether Library employees may sue under the CAA.</p> <p>Substantive rulemaking process: The OC Board has issued EPPA regulations, substantially similar to those promulgated by DoL, and has extended the regulations to cover the Library, but the extension has not been approved by the House and Senate. Accordingly, “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding” would be applied, pursuant to § 411 of CAA.</p>	<p>Substantive rights: = The Library is covered under EPPA substantive rights as applied by the CAA.</p> <p>Administrative processes: + If CAA procedures applied, use of model ADR process would be prerequisite to proceeding with complaint. + Applying CAA procedures would provide counseling, mediation, and adjudication and appeal administered by the OC. Now no such procedures are provided under authority of an agency outside of the Library, unless under the CAA. {The CAA should provide for investigation and prosecution of retaliation.} {The CAA should require recordkeeping.} ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + Applying CAA procedures would grant Library employees the right to sue and, if they pursue an administrative claim, to obtain appellate judicial review.</p> <p>Substantive rulemaking process: = Substantive regulations under the CAA are now promulgated by the same process for the Library as for other employing offices.</p>	<p>– EPPA rights do not apply generally in the federal sector.¹</p>	<p>Substantive rights: = The Library is covered under EPPA substantive rights as applied by the CAA.</p> <p>Administrative processes: + Applying private-sector procedures would authorize DoL to receive complaints from Library employees and to investigate violations. – Private-sector provisions do not provide for administrative adjudication and appeal. Now there is disagreement whether these are available under the CAA.</p> <p>Judicial procedures: + Applying private-sector procedures would enable Library employees to sue, whereas the right to sue under the CAA now is subject to dispute. + DoL can prosecute private-sector violations in court. Even if CAA procedures apply, they would not include prosecution in court.</p> <p>Substantive rulemaking process: = The CAA provides that the Library shall be subject to generally the same regulatory requirements as under DoL’s regulations for the private sector. ~ Regulations are promulgated by DoL for all private-sector employers, whereas regulations now applicable to the Library, which must generally be the same as DoL’s regulations, are adopted by the OC Board for all employing offices, subject to approval by the House and Senate.</p>

1 To our knowledge, the only federal-sector coverage other than the CAA is under the Presidential and Executive Office Accountability Act. See Table 5, note 1, above.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: § 205 of the CAA extends the substantive rights of the WARN Act to the Library. In addition, Library regulations and collective bargaining agreements require 90 days’ advance notice to employees affected by a RIF.¹</p> <p>Administrative processes: There is disagreement whether Library employees alleging § 205 violations may use CAA administrative procedures.</p> <p>Judicial procedures: There is disagreement whether Library employees may sue under the CAA.</p> <p>Substantive rulemaking process: The OC Board has issued WARN Act regulations, substantially similar to those promulgated by DoL, and has extended the regulations to cover the Library, but the extension has not been approved by the House and Senate. Accordingly, “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding” would be applied, pursuant to § 411 of CAA.</p>	<p>Substantive rights: = The Library is covered by WARN Act rights as applied by the CAA.</p> <p>Administrative processes: + If CAA procedures applied, use of model ADR process would be prerequisite to proceeding with complaint. + Applying CAA procedures would provide counseling, mediation, and adjudication administered by the OC. Now no such procedures are provided under authority of an agency outside of the Library, unless under the CAA. <i>{The CAA should provide for investigation and prosecution of retaliation.}</i> ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + Applying CAA procedures would grant Library employees the right to sue and, if they pursue an administrative claim, to obtain appellate judicial review of a final administrative decision.</p> <p>Substantive rulemaking process: = Substantive regulations under the CAA are now promulgated by the same process for the Library as for other employing offices.</p>	<p>– WARN Act rights do not apply generally in the federal sector.² (Federal-sector employees in the competitive service are entitled to 60 days’ notice of a RIF, pursuant to applicable civil service statutes and regulations. However, this table makes no assumptions as to whether the Library’s existing regulations and remedies involving RIFs would be retained, or whether general civil service statutes and regulations governing RIFs would be applied to GAO. See generally footnote 1.)</p>	<p>Substantive rights: = The Library is covered under WARN Act substantive rights as applied by the CAA.</p> <p>Administrative processes: – Private-sector provisions do not provide for either investigation, prosecution, or administrative adjudication of complaints, whereas now there is disagreement whether counseling, mediation, and administrative adjudication are available under the CAA.</p> <p>Judicial procedures: + Applying private-sector procedures would enable Library employees to sue, whereas the right to sue under the CAA now is subject to dispute.</p> <p>Substantive rulemaking process: ~ Regulations are promulgated by DoL for all private-sector employers; regulations now applicable to the Library, which must generally be the same as DoL’s regulations, are adopted by the OC Board for all employing offices, subject to approval by the House and Senate.</p>

1 This table assumes that, under either the CAA option or the private-sector option, the existing procedures for remedying violations of the Library’s RIF regulations and collective bargaining agreements need not be changed. The notice rights under the Library’s RIF regulations seem sufficiently distinct from WARN Act rights that the existing procedures for seeking a remedy for RIF notice violations need not be superseded by application of either the CAA or the private-sector provisions.

2 To our knowledge, the only federal-sector coverage other than the CAA is under the Presidential and Executive Office Accountability Act. See Table 5, note 1, above.

LIBRARY: VETERANS EMPLOYMENT AND REEMPLOYMENT

APPENDIX III, TABLE 27

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: Library employees, like all other public- and private-sector employees, are covered by USERRA. In addition, § 206 of the CAA extends substantive rights of USERRA to the Library.</p> <p>Administrative processes: Under USERRA, Library employees may file a complaint with DoL, which investigates and informally seeks compliance. There is disagreement as to whether Library employees alleging a § 206 violation may use CAA administrative procedures.</p> <p>Judicial procedures: USERRA does not authorize Federal employees, including those at the Library, to sue. There is disagreement whether Library employees alleging a § 206 violation may sue under the CAA.</p>	<p>Substantive rights: = The Library is covered under USERRA rights as applied by the CAA, as well as under the USERRA itself, which applies substantially the same rights as the CAA.</p> <p>Administrative processes: + Applying CAA procedures would make the use of model ADR process a prerequisite to proceeding with complaint. + Applying the administrative procedures of the CAA would provide counseling, mediation, and adjudication administered by the OC. <i>{The CAA should provide for investigation and prosecution of retaliation.}</i> = These CAA procedures would apply in addition to the right to file a claim with DoL under USERRA.¹ ~ CAA confidentiality rules would apply.</p> <p>Judicial procedures: + Applying CAA procedures would grant Library employees the right to sue for § 206 violations; Library employees are not afforded a private right of action under USERRA.</p>	<p>Substantive rights: = The Library is covered under the same substantive USERRA provisions as apply generally to the federal sector, and is also covered under the CAA, which makes applicable substantially the same rights as the USERRA applies in the federal sector.</p> <p>Administrative processes: = Employees under federal-sector provisions of USERRA, including Library employees, may complain to DoL, which investigates and informally seeks compliance. + USERRA generally authorizes federal-sector employees, but not Library employees, to: (1) request the Special Counsel to pursue a case on the employee’s behalf, and (2) have an alleged USERRA violation adjudicated by the MSPB.</p> <p>Judicial procedures: = Federal-sector employees, like Library employees, may not sue.</p>	<p>Substantive rights: = The Library is covered under the same substantive USERRA provisions as private-sector employers.</p> <p>Administrative processes: = Private-sector employees, like Library employees, may submit complaints to DoL, which investigates and informally seeks compliance.</p> <p>Judicial procedures: + Applying private-sector procedures would afford Library employees the right to sue, whereas the right of Library employees to sue under the CAA is now subject to dispute. + Private-sector employees may ask the Attorney General to prosecute the violation in court.</p>

1 This table assumes that, under the CAA option, the existing remedial procedures under USERRA would be retained. § 225(d) of the CAA states that covered employees “may also utilize any provisions of . . . [USERRA] that are applicable to that employee.”

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: All substantive rights of the ADA, including those involving public access, apply to the Library, under § 509 of the ADA.</p> <p>Administrative processes: The Library must maintain administrative procedures under which members of the public can seek redress for ADA violations. The Library investigates complaints and provides for appeal within the agency.</p> <p>There is no administrative appeal to an entity outside of the Library, nor other outside agency oversight of compliance by the Library.</p> <p>Judicial procedures: After having exhausted administrative remedies, members of the public can sue and have a trial <i>de novo</i>. (An individual may sue either after a final GAO decision or if there is no such decision 180 days after the complaint.)</p> <p>Substantive rulemaking process: Substantive regulations promulgated by executive branch agencies under titles II-III of the ADA are not made applicable.</p>	<p>Substantive rights: = Substantive rights under the CAA are generally the same as the public-access rights now at the Library under the ADA.</p> <p>– The prohibition against retaliation, which applies now at the Library under the ADA, is not granted under the CAA to members of the public.</p> <p>Administrative processes: + The CAA provides for mediation and adjudication administered by the OC; now, there is no administrative appeal to an entity outside of the Library.</p> <p>+ The CAA establishes an enforcement-based process, under which an administrative proceeding may be brought only by the GC of the OC after receiving a charge. Enforcement at the Library is by private action only.</p> <p>~ CAA confidentiality rules would apply to mediations, hearings, and deliberations.</p> <p>Judicial procedures: – The charging individual may not sue under the CAA; but such individual, having intervened in the administrative proceeding, may appeal to the Federal Circuit.</p> <p>Substantive rulemaking process: + The OC Board adopts regulations, generally the same as executive-branch agency regulations for the private sector, subject to House and Senate approval.¹ No entity outside of the Library now issues regulations applicable to the Library.</p>	<p>Substantive rights: = For the federal sector, § 504 of the Rehabilitation Act applies substantive rights that are generally the same as the public-access rights applicable to the Library under the ADA.</p> <p>Administrative processes: = In the federal sector, as at the Library, agencies have generally established internal procedures for investigating and resolving public-access complaints.</p> <p>+ The Attorney General is responsible under E.O. 12250 (reproduced at 42 U.S.C. § 2000d–1 note) for reviewing agency regulations and otherwise coordinating implementation and enforcement; as to the Library, no entity outside of the Library exercises such functions.</p> <p>Judicial procedures: = In the federal sector, as at the Library, members of the public alleging public-access violations by agencies may sue.</p> <p>Substantive rulemaking process: = In the federal sector, as at the Library, substantive regulations promulgated by executive branch agencies under titles II-III of the ADA are not made applicable.</p>	<p>Substantive rights: = For the private sector, title III of the ADA applies generally the same substantive rights involving public access as are applicable to the Library under the ADA.</p> <p>Administrative processes: + Under title III of the ADA, the Attorney General investigates alleged violations in the private sector; as to the Library, no entity outside of the Library now investigates.</p> <p>Judicial procedures: = In the private sector, as now at the Library, members of the public alleging public-access violations may sue.</p> <p>+ The Attorney General may prosecute title III violations in court, whereas no agency may do so now as to the Library.</p> <p>Substantive rulemaking process: + Private-sector employers are subject to substantive regulations promulgated by the Attorney General. No entity outside of the Library now promulgates regulations applicable to the Library.</p>

1 Because the Board’s public access regulations have not been approved, “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding” would be applied, pursuant to § 411 of CAA.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: Section 215 of the CAA extends the substantive rights of the OSHAct to the Library and requires compliance with occupational safety and health (“OSH”) standards as established by DoL.</p> <p>Administrative processes: The administrative procedures of § 215 of the CAA apply fully to the Library. Requirements to keep records and report to DoL are now imposed under OSHAct and civil service law.</p> <p>Judicial procedures: The judicial procedures of § 215 of the CAA apply fully to the Library.</p> <p>Substantive rulemaking process: The OC Board has adopted substantive regulations incorporating DoL’s standards, and has adopted an amendment extending those regulations to cover the Library. However, neither the regulations nor the amendment has been approval by the House and Senate. Accordingly, “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding” would be applied, pursuant to § 411 of CAA.</p>	<p>= The Library is fully subject to the substantive, administrative, and judicial provisions of the CAA with respect to occupational safety and health, including the process for establishing any regulatory requirements.</p> <p>~ {Recordkeeping and reporting requirements should be applied, administered by the OC}; whereas law now applicable to the Library requires recordkeeping and reporting to DoL. {The CAA should provide for investigation and prosecution of retaliation.}</p>	<p>Substantive rights: = E.O. 12196 (reproduced at 5 U.S.C. § 7902 note) requires executive-branch agencies to comply with the same DoL standards as are made applicable to employing offices, including the Library, under the CAA.</p> <p>Administrative processes: ~ E.O. 12196 requires DoL to inspect and consider employee complaints; the CAA is administered for employing offices, including the Library, by the OC. Unlike the CAA, the E.O. also requires each agency to establish its own OSH program.¹</p> <p>~ If DoL and the employing agency disagree, there is no adjudicatory or other formal dispute resolution process under the E.O., as there is under the CAA. Rather, the disagreement is submitted to the President.</p> <p>Judicial procedures: – There is no judicial review of actions or decisions under the E.O., unlike the CAA, which provides for appellate judicial review of administrative decisions.</p> <p>Substantive rulemaking process: ~ The E.O. was issued for the executive branch by the President; CAA regulations, which are applicable to the Library, are adopted by the OC Board, subject to approval by the House and Senate.</p>	<p>Substantive rights: = In the private sector, the OSHAct applies the same DoL standards as are made applicable to employing offices, including the Library, under the CAA.</p> <p>Administrative processes: = Administrative processes for the private sector are generally the same as those made applicable for employing offices, including the Library, by the CAA. ~ DoL administers the OSHAct in the private sector; the OC administers the CAA for employing offices, including the Library.</p> <p>Judicial procedures: = Judicial review procedures in the private sector are generally the same as those made applicable for employing offices, including the Library, under the CAA. ~ DoL investigates and prosecutes private-sector retaliation. The CAA, which now covers the Library, has no such authority, {but it should}; employees alleging retaliation can sue under the CAA, but could not under private-sector OSHAct.</p> <p>Substantive rulemaking process: ~ DoL promulgates standards for all private-sector employers. The OC Board adopts CAA regulations, generally the same as DoL regulations. As the House and Senate have not approved, § 411 of CAA would apply “the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.”</p>

1 The program must include periodic inspections, responding to employee reports of hazard, preventing retaliation, and creating a joint labor-management Occupational Safety and Health Committee.

Current Regime	— Compared to CAA Coverage	— Compared to Federal-Sector Coverage	— Compared to Private-Sector Coverage
<p>Substantive rights: The Library is covered by Chapter 71 and by the FLRA’s regulations thereunder.</p> <p>Administrative processes: Under Chapter 71, the FLRA hears cases arising from representation matters and unfair labor practices (“ULPs”) at the Library. Exceptions from arbitral awards may be taken to the FLRA (except for awards involving adverse and unacceptable-performance actions, which are subject to judicial review).</p> <p>Judicial procedures: FLRA decisions on matters other than representation or exceptions from arbitral awards may be appealed to the Federal Circuit. Any person aggrieved, including a Library employee, may appeal. FLRA decisions on exceptions to arbitral awards may not be further appealed unless they involve a ULP. Arbitral awards involving adverse or unacceptable-performance actions, which may not be appealed to the FLRA, may be appealed to the Federal Circuit.</p> <p>Substantive rulemaking process: The Library is subject to substantive regulations promulgated by the FLRA.</p>	<p>Substantive rights: = The CAA affords generally the same substantive rights as apply now at the Library under Chapter 71. –The CAA empowers the Board, with House and Senate approval, to exclude offices from coverage under labor-management relations provisions if exclusion is required because of conflict of interest or Congress’s constitutional responsibilities; Chapter 71 has no such provision.</p> <p>Administrative processes: = The OC Board under the CAA exercises a role generally similar to that of the FLRA. ~ CAA confidentiality rules would apply to hearings and deliberations.</p> <p>Judicial procedures: – A charging party may not appeal a ULP decision. – The CAA, unlike Chapter 71, affords no judicial review of arbitral awards involving adverse or unacceptable-performance actions (nor, under the CAA, is there administrative review of such actions). – The CAA, unlike Chapter 71, affords no authority to the OC to seek temporary relief or a restraining order.</p> <p>Substantive rulemaking process: – The OC Board adopts CAA regulations, ordinarily the same as FLRA regulations, subject House and Senate approval; the Library is subject to regulations adopted for the federal sector by the FLRA.</p>	<p>= The same substantive, administrative, and judicial statutory provisions of Chapter 71 apply generally in the federal sector as apply now at the Library, and agencies in the federal sector are generally subject to the authority of the FLRA as is the Library.</p>	<p>Substantive rights: + Private-sector employees, covered by the National Labor Relations Act (“NLRA”), have the right to strike. ~ Unions and employers in the private sector may enter into union security agreements. ~ Unions in the private sector, if the employer agrees, may obtain exclusive recognition by card majority (<i>i.e.</i>, without secret ballot election).</p> <p>Administrative processes: ~ Grievance procedures are not a required provision of any bargaining agreement in the private sector, as they are under Chapter 71. ~ Awards under binding arbitration are not ordinarily subject to review, as they are under Chapter 71.</p> <p>Judicial procedures: ~ NLRB decisions are appealable to the D.C. Circuit or the Circuit where the employer is located; under Chapter 71, FLRA decisions are appealable to the Federal Circuit.</p> <p>Substantive rulemaking process: = NLRB has authority to issue substantive regulations, as does the FLRA for the federal sector, including the Library, under Chapter 71.</p>